

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
PETITION OF BRIAN A. AND : Case No. S-2824  
ELLEN L. KADOW : OZAH NO. 12-13  
:  
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A hearing in the above-entitled matter was held on  
February 2, 2012, commencing at 10:35 a.m., at the Office of  
Zoning and Administrative Hearings, 100 Maryland Avenue,  
Second Floor, Davidson Memorial Hearing Room, Rockville,  
Maryland 20850 before:

MARTIN L. GROSSMAN, Hearing Examiner

A P P E A R A N C E S

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ON BEHALF OF THE PETITIONER:

Brian A. Kadow 14

ADDITIONAL TESTIMONY BY:

Susan Scala-Demby 33

Malcolm Spicer 34

Cynthia Caudillo 61

P R O C E E D I N G S

1  
2 MR. GROSSMAN: This is a public hearing in the  
3 matter of Brian and Ellen Kadow, Board of Appeals No.  
4 S-2824, OZAH No. 12-13, application for a special exception  
5 to allow an accessory apartment in the cellar of a one  
6 family detached home at 3603 Thornapple Street, Chevy Chase,  
7 Maryland on land in the R60 zone. The property's legal  
8 description is Lot 2, Block 4 of the Otterbourne Subdivision  
9 of Chevy Chase. This hearing is conducted on behalf of the  
10 Board of Appeals. My name is Martin Grossman. I'm the  
11 hearing examiner, which means I will take evidence and write  
12 a report and recommendation to the Board of Appeals which  
13 will make the decision in this case. Will the parties  
14 identify themselves, please, for the record?

15 MR. KADOW: Brian Kadow, K-A-D-O-W, K-A-D-O-W.

16 MR. GROSSMAN: All right.

17 MS. KADOW: Ellen Kadow.

18 MR. GROSSMAN: All right. Mr. and Ms. Kadow.

19 Now, I see we have some other people in the audience here --

20 MR. KADOW: Uh-huh.

21 MR. GROSSMAN: -- including Mr. Spicer and Susan  
22 Scala-Demby from DPS. Why don't you come forward, folks?  
23 And why don't you identify yourselves for the record,  
24 please?

25 MR. SPICER: Yes. Malcolm Spicer, attorney for

1 the Montgomery County Department of Permitting Services.

2 MR. GROSSMAN: All right.

3 MS. SCALA: Susan Scala-Demby, zoning manager for  
4 Department of Permitting Services.

5 MR. GROSSMAN: Welcome. I see we also have people  
6 from housing. Would you identify yourself for the record,  
7 please?

8 MS. CAUDILLO: Cynthia Caudillo.

9 MR. GROSSMAN: All right. Ms. Caudillo, would you  
10 come forward, please. I see. Grab a chair there. There's  
11 one. Mack, could you help her with the chair?

12 MR. SPICER: Yes. Sure. Why don't you just come  
13 right up here? Would this be good?

14 MR. GROSSMAN: That would be great.

15 MR. SPICER: Okay.

16 MS. CAUDILLO: Thank you.

17 MR. GROSSMAN: And I see we have one more lady in  
18 the audience.

19 MS. LUNDY: Cynthia Lundy.

20 MR. GROSSMAN: Ms. Lundy?

21 MS. LUNDY: Yes.

22 MR. GROSSMAN: Also from DH --

23 MS. LUNDY: CA.

24 MR. GROSSMAN: -- CA and, okay. So, I see nobody  
25 else in the audience. I won't ask if there's anybody here

1 from the community to testify for or against since we have  
2 all the participants at the table now.

3           Let me explain a little bit about the nature of  
4 these proceedings first. It's a combination of formality  
5 and informality. We're formal in the sense that all  
6 witnesses testify under oath. They're subject to cross-  
7 examination. There's a Court Reporter who takes everything  
8 down. There will be a transcript of the proceedings. We  
9 proceed pretty much the way a courtroom does. The rules of  
10 evidence are a little bit more relaxed, and we're a little  
11 bit more relaxed in an administrative proceeding but it's  
12 pretty much the way you'd see a courtroom proceeding. If  
13 you have any questions along the way, don't hesitate to ask  
14 me.

15           And you're here today for a special exception and  
16 a special exception is not what it sounds like. It's  
17 actually not a variance. It is a statutorily permitted use  
18 if certain conditions are met. Both general conditions that  
19 are spelled out in the code for almost all special  
20 exceptions and specific conditions that are spelled out in  
21 the code for this type of special exception, an accessory  
22 apartment, and so, you have to meet all of those criteria.

23           All right. Let me deal with a few preliminary  
24 matters first. Mr. and Ms. Kadow, I'd like to swear you in.  
25 Would you raise your right hands, please? Do you swear or

1 affirm to tell the truth, the whole truth, and nothing but  
2 the truth under penalty of perjury?

3 MR. KADOW: I do.

4 MS. KADOW: I do.

5 MR. GROSSMAN: All right. And I think while we're  
6 at it, let me swear in Ms. Scala-Demby and Ms. Caudillo.  
7 Would you raise your right hands, please? Do you swear or  
8 affirm to tell the truth, the whole truth, and nothing but  
9 the truth under penalty of perjury?

10 MS. CAUDILLO: I do.

11 MS. SCALA: I do.

12 MR. GROSSMAN: All right. I didn't swear in Mr.  
13 Spicer because he's an attorney of this Court would be of  
14 this jurisdiction and would be expected to be bound by his  
15 oath.

16 Okay. Now, there appears to be one controlling  
17 issue in this case, and I'm going to get to all the other  
18 things in the case as well. But, the one controlling issue  
19 is spelled out in the technical staff report and then  
20 corrections that they sent and additions. Exhibits 14 and  
21 15, as corrected, and Exhibit 16. I'll mention, let me deal  
22 first with the correction. I don't know if you saw it or  
23 not in the file but there was a mistake in the staff report  
24 in the table on page 10, I think it was, of the staff  
25 report. Yes.

1 MR. KADOW: Now, is this Park and Planning's?

2 MR. GROSSMAN: Yes. This is Park and Planning's  
3 staff report. You should have a copy of that. I presume  
4 you did receive Park and Planning staff report.

5 MS. KADOW: We did.

6 MR. GROSSMAN: Okay. And you received the housing  
7 inspector's report as well?

8 MR. KADOW: Yes. Uh-huh.

9 MR. GROSSMAN: Okay. Good. And the staff report,  
10 we're talking about is, let's see. Is Exhibit 14.

11 MS. KADOW: It's on page 10?

12 MR. GROSSMAN: Yes. On page 10. If you look at  
13 the table under existing next to side setbacks, they  
14 mistakenly put 8/18. They really meant to put that it was  
15 five feet and nine feet more or less as the side setbacks as  
16 what's existing as they indicated in the text. They  
17 corrected that in an email which I put in the record as  
18 Exhibit 16, I think it is. Yes. Exhibit 16. All right.  
19 And Exhibit 15, they said that the additional materials you  
20 had submitted to them didn't change what they had reviewed,  
21 and they still felt that there was a discrepancy between the  
22 side yard setbacks and what is required in the zoning  
23 ordinance, and I was going to -- I had planned to say to you  
24 that if you wish to apply for a variance that I would either  
25 postpone the remainder of this hearing or hold the record

1 open or do something to accommodate you if you wish to do  
2 that. But, I see that, much to my surprise, that Ms. Scala-  
3 Demby is here and so perhaps you have some evidence on this  
4 point, and I'll certainly listen to that before we deal with  
5 the issue directly. Okay. Let me then turn to Exhibit 14.  
6 We'll get back to this issue in a second. The staff report  
7 recommends approval, that's Exhibit 14, with certain  
8 conditions, one of which is a variance. Other than that  
9 particular reservation that they had about the side yard  
10 setbacks, do you accept the findings and conclusions in the  
11 technical staff report, Exhibit 14?

12 MR. KADOW: No.

13 MR. GROSSMAN: You do not? I'm not talking about  
14 -- other than the side --

15 MR. KADOW: The side yard setbacks.

16 MR. GROSSMAN: Other than the side yard setbacks.

17 MR. KADOW: Oh.

18 MR. GROSSMAN: I'm just talking about everything  
19 else.

20 MR. KADOW: Oh.

21 MR. GROSSMAN: They have lots of other  
22 evaluations.

23 MR. KADOW: Yeah.

24 MR. GROSSMAN: But, aside from the side yard  
25 setbacks issue, do you accept the findings and conclusions



1 of the staff report?

2 MR. KADOW: Yes.

3 MR. GROSSMAN: And do you accept the conditions  
4 that they recommend other than the variance condition?

5 MR. KADOW: Now, this is the Park and Planning?

6 MR. GROSSMAN: Yes. I'm just talking about Park  
7 and Planning now.

8 MR. KADOW: Yeah. The main condition was, well,  
9 other than the variance --

10 MS. KADOW: That was the only thing we really  
11 objected to was the required variance.

12 MR. KADOW: Well, what page is that on?

13 MR. GROSSMAN: That's on the first page.

14 MS. KADOW: It's on the first page.

15 MR. KADOW: Oh.

16 MS. KADOW: Here it is.

17 MR. KADOW: Applicant bound --

18 MR. GROSSMAN: Those are pretty routine  
19 conditions. In fact--

20 MR. KADOW: Yeah.

21 MR. GROSSMAN: -- we usually have a few more that  
22 we add in to accessory apartment special exceptions.

23 MS. KADOW: But this is only --

24 MR. KADOW: Yeah. The four items listed. We  
25 don't agree with the variance but the other three are fine.

1           MR. GROSSMAN: Okay. And then we usually have  
2 some other conditions such as following the housing code  
3 inspector's requirements and following all other regulations  
4 that may apply, that sort of thing.

5           MR. KADOW: Sure.

6           MR. GROSSMAN: And that you're bound by your  
7 testimony. So, those are usually in, and I take it you  
8 don't offer any objection to that?

9           MS. KADOW: No.

10          MR. GROSSMAN: Okay. And now let's turn to the  
11 housing code inspector's report which is Exhibit 17A, I  
12 think. Have you read the housing code inspector's report?

13          MR. KADOW: We did.

14          MR. GROSSMAN: Okay.

15          MR. KADOW: I glanced over it but I don't think I  
16 had any problems with it. Now I got to find it.

17          MS. KADOW: Is it in that folder?

18          MR. GROSSMAN: It's dated January 31, 2012.

19          MS. CAUDILLO: Here's a copy.

20          MR. GROSSMAN: Do you have an extra copy?

21          MR. KADOW: No. I have one here.

22          MR. GROSSMAN: Oh. You have one? Okay. Good.

23          MR. KADOW: Okay. It's the, okay. It  
24 specifically states the accessory apartment plan submitted  
25 by owner of record. Modification must meet housing. Right.

1 Doors must be installed. Right. Owner must obtain all  
2 permits. Right. Montgomery County. Right. Must install  
3 window. Right. I have no problem with it.

4 MR. GROSSMAN: It's got seven issues that they set  
5 forth and then they also list the amount of habitable space  
6 which is different from the overall space of the accessory  
7 apartment. They list it as 473.47 square feet and indicate  
8 that it would be limited to two occupants. Do you see all  
9 that?

10 MR. KADOW: Yes.

11 MR. GROSSMAN: And that your driveway, they  
12 indicate the size of your driveway and some of the --

13 MR. KADOW: I do have one question about the  
14 habitable space. I have a measurement says 901 square feet.

15 MR. GROSSMAN: Right. That's overall space.

16 MR. KADOW: Yeah. Takes in --

17 MR. GROSSMAN: They don't measure closets. They  
18 don't measure various other things as part of habitable  
19 space.

20 MR. KADOW: Oh. Okay.

21 MR. GROSSMAN: And Ms. Caudillo can explain that  
22 to you when -- you can ask her that question when she  
23 testifies, if you like. But, in terms of the conditions  
24 that the housing code inspector has set forth in Exhibit  
25 17A, you agree to those findings and conditions?

1 MR. KADOW: Yes.

2 MR. GROSSMAN: Okay. I'm just trying to simplify  
3 the remainder of the hearing because much of what we look to  
4 is covered by those two reports. Okay. Do you have an  
5 affidavit of posting? Did you execute an affidavit of  
6 posting indicating that the property was posted for the  
7 required period of time?

8 MR. KADOW: An affidavit? You bet.

9 MR. GROSSMAN: Okay. Usually it's a tag from my  
10 office. Usually they supply it to people in advance at the  
11 hearing, and then you --

12 MR. KADOW: All right. And we never received one.  
13 We've had a sign up for over six months.

14 MR. GROSSMAN: Okay. I'm going to let you --  
15 we'll break at some point here and let you --

16 MR. KADOW: Get one.

17 MR. GROSSMAN: -- get a copy of the form and  
18 execute it. There are notaries in the Board of Appeal's  
19 Office, and you can sign it in front of the notary, and  
20 we'll put it in the record. Did you happen to bring with  
21 you a deed to the premises or a copy of the deed to the  
22 premises?

23 MS. KADOW: We have a copy of the deed.

24 MR. KADOW: We do?

25 MS. KADOW: Uh-huh.

1           MR. GROSSMAN: Okay. And then if we put that in  
2 the record as well.

3           MS. KADOW: I thought that was in the record that  
4 we submitted.

5           MR. GROSSMAN: I didn't see it. But let me take a  
6 look. I mean, if necessary, I printed out the state tax  
7 records indicating your ownership. So, we can use that if  
8 you don't have a copy.

9           MR. KADOW: Well, I have the deed for the  
10 unimproved lot when I bought it back in '74.

11          MR. GROSSMAN: Tax records indicate owners name  
12 Kadow, Brian et al trust.

13          MR. KADOW: Yeah.

14          MR. GROSSMAN: And I take it that you and your  
15 wife are the trustees of the trust?

16          MR. KADOW: Yes.

17          MS. KADOW: Yes.

18          MR. GROSSMAN: Okay. And if you have a copy of  
19 whatever copy of a deed you have, we could -- is that  
20 something we can keep or should we be making a copy?

21          MS. KADOW: We need to make a copy of this.

22          MR. GROSSMAN: Okay. All right. Why don't we --  
23 I'll tell you what, let's, well, we turn to that since we  
24 have Ms. Scala-Demby and Mr. Spicer here, we're going to let  
25 you go forward now. Unless you have any other preliminary

1 matters that you want to address, we'll go directly to your  
2 evidence. Do you have any other preliminary matters you  
3 want to address before you get to whatever evidence you want  
4 to present?

5 MR. KADOW: The evidence I want to present is  
6 regarding the building permit.

7 MR. GROSSMAN: Okay.

8 MR. KADOW: And the statute of limitations.

9 MR. GROSSMAN: Okay.

10 MS. KADOW: We have copies here.

11 MR. GROSSMAN: Okay. Well, why don't we do this.  
12 I've sworn you in. You want to testify first, Mr. Kadow?

13 MR. KADOW: Sure. Sure. I received the  
14 Montgomery County report record of Kathleen A. Reilly, a CP  
15 planner --

16 MR. GROSSMAN: Right.

17 MR. KADOW: -- coordinator with the now national  
18 Park and Planning commission. I received this report  
19 Monday, January 31st and found several pertinent facts  
20 missing. The property has a valid building permit issued on  
21 May 2, 1986. A copy is enclosed with a survey noting the  
22 west side setback of five feet. Ms. Riley is of the opinion  
23 that the permit was wrongly issued and mandated a variance  
24 as to a requisite to an approval upon our accessory  
25 apartment application. The subject property was inspected

1 as to the inherence of all building codes including side  
2 yard setbacks. The Montgomery County building inspector who  
3 performed the wall check was Mr. Mike Pisani, 301-370-1775.  
4 See attached plat. When I contacted him by phone, he said  
5 that he did not believe the Park and Planning was taking  
6 this position. Legitimate wall checks were performed on 11-  
7 24-1988.

8 MR. GROSSMAN: Well, you can't really tell me  
9 about it since this is such a substantive part of this. I  
10 can't really receive his testimony. You do have DPS people  
11 here who can testify about it. But, what he said to you on  
12 the phone, I can't really take.

13 MS. KADOW: It's hearsay.

14 MR. KADOW: Okay. That's fine. That's fine. I  
15 can --

16 MR. GROSSMAN: We can accept a certain amount of  
17 hearsay here but when it goes to the heart of the issue, I'm  
18 very reluctant to accept that. But, go ahead.

19 MR. KADOW: Okay. Fine. Well, I contacted two of  
20 the inspectors involved, the engineer and the inspector, and  
21 my comments regarding them, in enlisting Michael Patterson,  
22 an architect who sited the house, my land engineer, Jeffrey  
23 Lawrence who is a land surveyor, license 5216, and his phone  
24 number if you need it, 301-924-4570.

25 MR. GROSSMAN: Are you going to make that document

1 that you're reading from a part of the record here?

2 MR. KADOW: Yes.

3 MR. GROSSMAN: Okay. Well, then I'll have it all  
4 on there.

5 MS. KADOW: Would you like to have it? It's all  
6 here.

7 MR. GROSSMAN: I would. That would be great.  
8 Thank you. Let's mark that as an exhibit.

9 MS. KADOW: Thank you.

10 MR. SPICER: Yes. Thank you.

11 MR. KADOW: Michael Patterson with Patterson and  
12 Worland Architecture, registration board 2550, sited the  
13 house on the plan. That's subject of record. The building  
14 inspector for Chevy Chase was Navarre D. Purcell for the  
15 village of Chevy Chase, Section 5, found no violations.  
16 That is also submitted in his write off that he did the  
17 inspection for Chevy Chase, Section 5.

18 My comments about this and the licensing of the  
19 building's permit was that the builders and engineers and  
20 architects were qualified professionals, duly licensed in  
21 the state of Maryland and would be qualified as experts in  
22 any court in Maryland and Montgomery County including Park  
23 and Planning. They did have one thing in common. They were  
24 familiar with the 1986 ordinance for the R60 zone and were  
25 aware of the effect of the subdivision's age, plat book 1,



1 plat 1, subdivided in 1894 by signing off on the wall  
2 check's survey. They acknowledged the validity of the  
3 existing permits. Well, that's hearsay, I guess. And,  
4 let's see.

5 MR. GROSSMAN: Well, I think I understand your  
6 argument here. The question to me is not so much whether  
7 they're experts. The question is if they erred, they erred.  
8 If, in fact, we can't find a basis legally, Ms. Reilly  
9 couldn't find a basis legally, and you can't point me to a  
10 zoning ordinance that permits the setbacks that you have.  
11 That's a different story. Now, you may have other arguments  
12 to make but as to the fact that they may have been experts  
13 in their field, they can still make a mistake, and the  
14 question is whether or not that's enforceable now. We'll --

15 MR. KADOW: They told me that they came up with  
16 their decision. There's, I want to say grandfathered, but  
17 that's not appropriate. There are sub regulations and at  
18 the time of the subdivision in 1986, I'm stating this. That  
19 there was no search for appropriate records that covered  
20 1986, and the closest I can come is a development standard  
21 for R60 zone revised as January 27, 2010. It states, and I  
22 can submit this, too. This is a summary of --

23 MR. GROSSMAN: Ms. Reilly, attach that to her --

24 MR. KADOW: Yeah. I sent it to her. So --

25 MR. GROSSMAN: -- to her submission, Exhibit 15,

1 and she looked it over, and the point she made is that  
2 there's nothing in that listing attached to Exhibit 15 for  
3 development standards for the R60 zone that is an exception  
4 to your situation because your lot is not less than 50 feet  
5 wide, and so the exceptions they talk about, lots that are,  
6 you know, 40 feet wide or whatever, don't apply, and so none  
7 of the exceptions in here listed as a development standard  
8 apply.

9 MR. KADOW: Right. I --

10 MR. GROSSMAN: She went back even to the 1928  
11 zone, I think it was, zoning ordinance and found that none  
12 of those exceptions --

13 MR. KADOW: Subdivision regulations. I checked  
14 with my engineer. He said these items were found in the  
15 subdivision regulations.

16 MR. GROSSMAN: Well, wherever they're found,  
17 there's nothing on that sheet, and if you can point to me to  
18 an exception on that sheet that tells me that it doesn't  
19 apply.

20 MR. KADOW: I will do this. I will say that  
21 nobody is aware of the sub regulations that were affected at  
22 that time. I will point out one thing, and this comes  
23 extremely close, and this could be differently worded and  
24 mean an entirely different thing. Lot recorded between 10-  
25 28-30 and 9-30-1941, if a lot is 40 feet but less than 50

1 feet.

2 MR. GROSSMAN: Right.

3 MR. KADOW: I have a 50 foot lot.

4 MR. GROSSMAN: Right.

5 MR. KADOW: So, this --

6 MR. GROSSMAN: No. That's an exception that  
7 doesn't apply because it says if it's 40 feet but less than  
8 50 feet, and you have a 50 foot lot. So, that exception  
9 does not apply. That's the whole point.

10 MR. KADOW: Less than 50 feet. I agree with that.

11 MR. GROSSMAN: Right.

12 MR. KADOW: But my point being that this comes  
13 within a centimeter of qualifying for this exception, and my  
14 point being that the wording of this by just simply saying a  
15 50 foot lot or less which is a very minor point and could be  
16 uncovered in the records if somebody did a due diligence and  
17 found these. My engineers told me that's how they got it is  
18 sub regulations and --

19 MR. GROSSMAN: It doesn't say 50 feet or less. It  
20 says less than 50 feet.

21 MR. KADOW: I know. I know. I said but the  
22 change. It's a very minor change.

23 MS. KADOW: It's a very minor -- we feel it's a  
24 specious argument, I guess, is what he's trying to say.

25 MR. GROSSMAN: What's a specious argument? I

1 don't understand your argument.

2 MS. KADOW: Well, if our lot was 49.999 --

3 MR. GROSSMAN: Right.

4 MS. KADOW: -- we would be fine is what that  
5 regulation is saying.

6 MR. GROSSMAN: That may be the case. It's just  
7 that it's a statute. I don't get to vary statutes.

8 MS. KADOW: And 50 is 50. I see.

9 MR. GROSSMAN: That's why there's a variance  
10 process through the Board of Appeals that allows a variance  
11 from the statute. I have no authority whatever. If it's a  
12 centimeter, I don't have the authority to vary the statutory  
13 language.

14 MS. KADOW: I understand.

15 MR. GROSSMAN: I'm not trying to be hard.

16 MR. KADOW: Okay. Fine.

17 MR. GROSSMAN: That's just not within my power.

18 MS. KADOW: We thought we'd try.

19 MR. KADOW: No. I mean that's --

20 MR. GROSSMAN: Or, if you can point me to a  
21 section that supports your point of view, I'm more than  
22 happy to look at it because I have no desire whatever to  
23 recommend denial of this special exception application.

24 MR. KADOW: Oh. I understand that. Sure.

25 MR. GROSSMAN: So, I'm more than happy to hear

1 some reference and I'm not sure -- let me turn for a second  
2 to Ms. Scala-Demby and find out -- I didn't know that you  
3 were coming today, Ms. Scala-Demby. Were you asked by the  
4 applicant or --

5 MS. SCALA: No. I was asked by Kathy Reilly at  
6 Park and Planning.

7 MR. GROSSMAN: I see. Okay. Great. And maybe  
8 she can shed some light on this issue while we're on it if  
9 you're finished with your presentation.

10 MR. KADOW: No. I'm not.

11 MR. GROSSMAN: Okay. Well, I'm going to let you  
12 go forward then. Go ahead, sir.

13 MR. KADOW: Okay. All these inspectors came up  
14 with, engineers and architects, came up with the same thing.  
15 Side yard setback were the same because they were looking at  
16 the same subdivision regulations that applied in 1986. I  
17 have not seen them. But, they're out there somewhere, and  
18 it's very hard to observe these from 25 years out.

19 The second point I want to make is the State's  
20 Court statute of limitations, a copy attached, which reads  
21 as follows: A government entity may not initiate an action  
22 or proceeding arising out of the failure of a building or a  
23 structure to comply with a setback line restriction more  
24 than three years after the date of which the violation first  
25 occurred. If the building or structure was constructed or

1 reconstructed notwithstanding any other provision of the  
2 state or local law to contrary, a building permit otherwise  
3 validly issued except for that permit wrongly permitted the  
4 building or structure to violate a setback restriction shall  
5 be considered a valid building permit.

6 MR. GROSSMAN: All right. So, this is Section 5-  
7 114.

8 MR. KADOW: We have a copy of that here if you  
9 want it.

10 MR. GROSSMAN: Right. You've attached --

11 MS. KADOW: You attached it.

12 MR. KADOW: Oh.

13 MR. GROSSMAN: -- to this Section 5-114 of the  
14 Maryland Codes Courts and Judicial Proceedings article and  
15 this is under B2. Now, the first part, B2, where it says a  
16 government entity may not initiate an action or proceeding  
17 arising out of the failure. There's nothing being initiated  
18 by the government here. This is an application by you for a  
19 special exception but there's nothing initiated there. What  
20 was the other section you were referring to? The last part?

21 MR. KADOW: Not withstanding any other provisions  
22 of state or local law --

23 MR. GROSSMAN: Where are you reading that from?

24 MR. KADOW: Oh. I thought we submitted that.

25 MS. KADOW: You should have a copy of everything

1 that he's referring to there.

2 MR. GROSSMAN: Yeah. I just want to know what the  
3 section citation because I just don't see it on this page  
4 that's why.

5 MS. KADOW: Okay.

6 MR. GROSSMAN: It may be, oh. Here it is.  
7 Failure to comply, under C.

8 MS. KADOW: We'll have to get ours.

9 MR. GROSSMAN: Let's see. 5-114C. No. Let's  
10 see. What's the section you were referring to? The second  
11 --

12 MR. KADOW: The second point was item 3. I don't  
13 know how to read this stuff.

14 MR. GROSSMAN: Okay. B3. Okay. For purposes of  
15 paragraph 2I?

16 MR. KADOW: Yeah.

17 MR. GROSSMAN: Okay. Of this subsection and not  
18 withstanding any other provision of state or local law to  
19 the contrary, a building permit that was otherwise validly  
20 issued except that the permit wrongfully permitted the  
21 building or structure to violate a restriction shall be  
22 considered a valid building permit. Okay. I want to point  
23 out here. I don't think anybody is challenging your  
24 building permit. They're not telling you to tear down your  
25 building. The question is whether or not --

1           MR. KADOW: But they're challenging the building  
2 permit.

3           MR. GROSSMAN: Well, who's the they that's  
4 challenging the building permit?

5           MR. KADOW: It'd be Park and Planning.

6           MR. GROSSMAN: Well, I don't think they're  
7 challenging this. They're not suggesting that your building  
8 permit -- that you have to tear down your building. The  
9 question here is a little bit different. Under the zoning  
10 ordinance, specific provision regarding accessory apartments  
11 in 59-G-2.00C, it has something called land use  
12 requirements. And what it says is the minimum lot size is  
13 6,000 square feet, which you meet. Except, and it has an  
14 exception. Then it says a property consisting of more than  
15 one record, blah, blah, blah. There's another point that  
16 doesn't apply. Then it says all other development standards  
17 of the zone must also apply including setbacks, lot widths,  
18 lot coverage, and building height and then it goes on. So,  
19 what they're wrestling with here is a specific provision.  
20 Whether or not the building permit was correctly issued or  
21 improvidently issued is not really the issue before me. The  
22 issue before me is whether you meet this provision of the  
23 zoning ordinance regarding accessory apartments. Do you  
24 comply with the zoning ordinance or do you fall within some  
25 exception within the zoning ordinance that would allow me to



1 recommend granting it? That's what they're wrestling with.  
2 It's not that Ms. Reilly is challenging your building  
3 permit. She may think it was incorrectly issued but  
4 nobody's saying to you now, at least I'm not and it's not  
5 before me, to tear down a portion of your house to provide  
6 the right side yard setback. What we're saying is you have  
7 to produce evidence that you can meet the development  
8 standards of the zone or fall within some exception to that  
9 and that's the focus of this inquiry.

10 MR. KADOW: So, the consideration is a validly  
11 issued except that the permit wrongfully permitted this  
12 building or structure to violate a setback line or  
13 restriction shall be considered a building permit. I don't  
14 understand what, and I'm assuming that the statute of  
15 limitations as I understand it precludes any penalties if  
16 our permit could possibly be interpreted as invalid at this  
17 late date. I perceive the variance mandated as a penalty  
18 and not consistent with the above mentioned statute.

19 MR. GROSSMAN: I'm not sure I agree with that but  
20 I'm not making a decision here now. I'm listening to the  
21 evidence.

22 MR. KADOW: Right.

23 MR. GROSSMAN: I'll consider your arguments but I  
24 do -- you have to consider where I'm at. It's wise for you  
25 to go forward and request a variance under these

1 circumstances. But, I think you should listen to the rest  
2 of the evidence here from the Department of Permitting  
3 Services, and I will give you whatever opportunity you want  
4 to make that decision and then you can go forward. If you  
5 decide you don't want to apply for it then I would consider  
6 all the evidence and make my recommendation. If you  
7 disagree with my recommendation, you have a right within 10  
8 days to request oral argument. If I recommend against it,  
9 you can request oral argument before the Board of Appeals.  
10 You can't introduce new evidence before the Board of Appeals  
11 but you can request oral argument before the Board of  
12 Appeals and you could argue there if that's the way it be  
13 done. So, you're given multiple opportunities to make your  
14 pitch but, as I said, I haven't really had a chance to sit  
15 down and look at these provisions. So, I'm not reaching any  
16 conclusions now.

17 But, I do want you to be aware of the provision in  
18 the zoning ordinance that is before me that I have to  
19 consider and the fact that I can never recommend approval of  
20 something that violates statutory language. So, in any  
21 event, it would have to fall and so that's -- I wanted you  
22 to understand that. But, I want to give, I don't want to  
23 rush you. So, you can continue with whatever you have to  
24 say.

25 MR. KADOW: I'm finished with the -- I just have a

1 question regarding a variance. Now, what is that, that  
2 commits me to re-filing for a variance? Going through all  
3 the permits. Another six months.

4 MR. GROSSMAN: I don't think the timing would be  
5 that long but this is not the first time I've had an  
6 accessory apartment case come up which would have required a  
7 variance to be permitted, and in the last one I had, the  
8 Board of Appeals did act. It did grant a variance. I'm not  
9 sure what their fee is on the variance. But, you would have  
10 to make a separate filing with them requesting the variance  
11 and meet the standards for a variance which are not easy to  
12 meet, by the way. I'm not saying that they're easy to meet  
13 but there are statutory standards for a variance and then  
14 they could either decide that variance or they could refer  
15 it over to me to make a recommendation on it. It's up to  
16 them as to how they would proceed.

17 And, what I did in the other case was, I kept the  
18 record open for an extended period of time for leaving the  
19 applicants the opportunity to make the decision as to  
20 whether or not they wanted to proceed with a variance  
21 request. If they decided not to proceed, then I would go  
22 ahead and close the record and make my recommendation. If  
23 they decided they wanted to proceed with a variance request,  
24 I'd keep the record open in the special exception until the  
25 variance request was acted on and then I would close the

1 record giving them any opportunity they wanted to, to --

2 MR. KADOW: And where would one get the criteria  
3 for a variance?

4 MR. GROSSMAN: It's in the zoning ordinance.

5 MR. KADOW: In the zoning --

6 MR. GROSSMAN: It's directly in the zoning  
7 ordinance.

8 MR. KADOW: And where would I get a copy of the  
9 zoning ordinance?

10 MR. GROSSMAN: You can look in our library or we  
11 can make it available to you. It's online also.

12 MR. KADOW: Okay.

13 MR. GROSSMAN: And you can look at the specific  
14 standards for it. They may have a printout in the Board of  
15 Appeals. I'm not sure. Those are all filed with the Board  
16 of Appeals.

17 MR. KADOW: Okay. So, the Board of Appeals would  
18 act on it.

19 MR. GROSSMAN: They would either act on it  
20 separately. They act on most variances without referring  
21 them to us. Or, they would refer it to my office to review  
22 it and make a recommendation to them. In cases where a  
23 variance request is filed at the same time as a special  
24 exception, they usually refer it over to us to decide, to  
25 recommend the whole ball of wax at once. Here, it's a

1 little different story. So, they might just hear it  
2 themselves. I don't know which they would do. That's up to  
3 them. They have the authority to make that decision.  
4 Special exceptions all come here for, all come to my office  
5 for a hearing. But, variances do not all come to me for a  
6 hearing.

7 MR. KADOW: So, you say it's pretty hard to get a  
8 variance.

9 MR. GROSSMAN: I'd say the standards are not easy  
10 to get a variance. But, I don't want to prejudge. You may  
11 have a perfect case for a variance here. I'm not sitting on  
12 that variance request. So, I don't want to opine on whether  
13 or not. I'm just saying that in general it's not because it  
14 varies from the statutory requirements.

15 MR. KADOW: Uh-huh.

16 MR. GROSSMAN: It's more difficult than getting a  
17 special exception usually because special exception is  
18 permitted if you can meet the statutory criteria. So, it's  
19 a different kind of evaluation by the Board of Appeals.

20 MS. KADOW: I have a question.

21 MR. GROSSMAN: Yes, ma'am.

22 MS. KADOW: The substance of our argument, I  
23 think, is that we complied with the request of the state of  
24 Maryland when we built our house 25 years ago.

25 MR. GROSSMAN: Yes.

1 MS. KADOW: And we followed all the permitting  
2 process and all of that doing all those things and it's, you  
3 know, and we followed the codes that we feel were used at  
4 that time. Why isn't it incumbent on Park and Planning to  
5 research and discover those codes?

6 MR. GROSSMAN: I'm not sure. When you say the  
7 codes, they did research the codes, and the codes they  
8 found, none of them covered your situation.

9 MS. KADOW: Our situation.

10 MR. GROSSMAN: And they couldn't make an  
11 exception. See, for, I mean, you may have a case for a  
12 variance. The variance standards involve a showing of  
13 uniqueness, a showing of either hardship or practical  
14 difficulty. There are different things in the standards  
15 then there are here. You may meet those and that would be  
16 for the Board of Appeals to decide. Under your  
17 circumstances, they may decide that it is appropriate to  
18 allow a variance to permit a special exception for an  
19 accessory apartment which doesn't change the footprint at  
20 all. Once again, I'm not saying or suggesting that it would  
21 be denied. So --

22 MS. KADOW: Okay. One last question.

23 MR. GROSSMAN: Yes, ma'am.

24 MS. KADOW: If the variance is denied, then are we  
25 dead in the water?

1           MR. GROSSMAN: I don't want to say you're dead in  
2 the water because I have not had an opportunity to look over  
3 the citations that you've given me today and see if they  
4 apply.

5           MS. KADOW: Okay.

6           MR. GROSSMAN: But, I see it certainly as a  
7 significant difficulty --

8           MS. KADOW: Impediment.

9           MR. GROSSMAN: -- given that there is this  
10 statutory language, and I also haven't heard from Mr. Spicer  
11 and Ms. Scala-Demby on it. So, maybe they have something  
12 that'll help enlighten us.

13          MS. KADOW: Okay.

14          MR. KADOW: I think she meant as far as the code.  
15 She meant regulations, sub division regulations, were not  
16 searched.

17          MR. GROSSMAN: Even a sub division regulation  
18 cannot vary a code. It just provides support in some way  
19 for the code but a regulation cannot vary a code. The  
20 zoning ordinance will control over a regulation if, in fact,  
21 there is some variance. So, if the code says white, you  
22 can't, or maximum, a regulation cannot say minimum. You  
23 know, it's not -- so, I'm not sure that finding that would  
24 help you but we'll ask, and you can certainly question the  
25 people who carry out those codes who are here now, Ms.

1 Scala-Demby, those questions.

2 MR. KADOW: Okay. And just one more question.

3 MR. GROSSMAN: Yes.

4 MR. KADOW: With a submittal that we just made as  
5 far as the subdivision regulations, subdivided in 1928,  
6 yada, yada, yada.

7 MR. GROSSMAN: Correct.

8 MR. KADOW: Those are a summary of subdivision  
9 regulations and they state that does have an effect on  
10 subdivisions outside the code.

11 MR. GROSSMAN: Well, there's subdivision -- there  
12 are provisions in the code regarding subdivision. Not just  
13 regulation but there are code, there's a whole code chapter  
14 on subdivision which would control in terms of subdivision.  
15 But, subdivision isn't really the issue before me. I'm not  
16 reviewing subdivision. What I'm looking at is whether or  
17 not you meet this provision in the zoning ordinance  
18 regarding accessory apartments. Do you meet the development  
19 standards of the zone? I'm willing to listen to arguments.  
20 I think it would be helpful if we hear from Ms. Scala-Demby.

21 MR. KADOW: Sure. Okay.

22 MS. KADOW: I think we agree.

23 MR. GROSSMAN: And then we can go on. I'll give  
24 you any opportunity you want to say, to question, Ms. Scala-  
25 Demby or to, and to say whatever you want in rebuttal. I'm



1 not trying to cut you off in any way.

2 MR. KADOW: That's fine.

3 MR. GROSSMAN: Okay. Let me first mark these,  
4 your submission, as exhibits. Exhibit 18 is your testimony  
5 signed by you, Mr. Kadow, today. I'll just say Exhibit 18  
6 is Kadow testimony, and then you had attachments. The first  
7 one is your building permit which will be Exhibit 18A. Your  
8 house location plat which is 18B. What appears to be a bill  
9 from Development Consultants Group, which is 18C. Then  
10 something else related to a building permit with your name  
11 on it. It said 197. I'll make that 18D. Development  
12 standards for the R60 zone. 18E. And then the last thing  
13 is three page copy of Section 5-114 of the Maryland Code  
14 Course and Judicial Proceedings chapter, and that's 18F.  
15 Okay. All right. Ms. Kadow, did you have anything you  
16 wanted to say before we hear from Ms. Scala-Demby? And I'll  
17 give you an opportunity after her, too.

18 MS. KADOW: That'll be fine.

19 MR. GROSSMAN: Okay. Thank you. All right. Ms.  
20 Scala-Demby, you've been sworn in. Would you once again  
21 identify yourself for the record and your position, please?

22 MS. SCALA: Susan Scala-Demby, zoning manager for  
23 Department of Permitting Services.

24 MR. GROSSMAN: Okay. And in the course of your  
25 duties, did you have occasion to deal with this case that's

1 Board of Appeals S-2824?

2 MS. SCALA: I was -- yes. I did.

3 MR. GROSSMAN: Okay. And would you explain to me  
4 how did you come to deal with this case?

5 MS. SCALA: Kathy Reilly from Park and Planning  
6 talked to me about it, and I did some research on the  
7 property to determine if the information she had was  
8 correct, and she asked me to come here today.

9 MR. GROSSMAN: Okay. And come here today to  
10 testify to what?

11 MS. SCALA: Well, to talk about -- I'm going to  
12 defer to Mr. Spicer for what we brought.

13 MR. SPICER: Well, let me summarize if I could  
14 because we wanted to make sure that you had before you  
15 information relating to the building permit that was issued  
16 by DPS back in, I believe, it was 1986 --

17 MR. GROSSMAN: Okay.

18 MR. SPICER: -- for the house on this lot which is  
19 part of a subdivision recorded in the late 1800s, I believe,  
20 probably 1894 or something like that.

21 MR. GROSSMAN: And is all that information  
22 contained in Exhibit 18 and its attachments that I've just  
23 marked?

24 MR. SPICER: Probably.

25 MR. GROSSMAN: Do you want to take a look at it to

1 make sure?

2 MR. SPICER: But we do have a permit in our  
3 records, in the Department's records, to indicate that the  
4 permit was issued reflecting the location of the house with  
5 a five foot side yard.

6 MR. GROSSMAN: Okay.

7 MR. SPICER: And we did review various additions  
8 of the zoning ordinances which, over the years, have in  
9 certain instances allowed for five foot side yards and that  
10 we also looked at the summary sheet of the development  
11 standards which you have --

12 MR. GROSSMAN: Yes.

13 MR. SPICER: -- and which the applicants have  
14 reviewed as well which spells out under the various  
15 ordinances where those five foot side yards were allowed,  
16 and there was one in the 1928 ordinance which doesn't apply.  
17 I think that had side yard allowed with lots that were 40  
18 feet or less.

19 MR. GROSSMAN: Right. I took a look at that  
20 ordinance myself, too.

21 MR. SPICER: Right. And then the next was a 1930  
22 ordinance which was in effect until 1941 which allowed for  
23 the side yards in lots that were less than 50 but more than  
24 40.

25 MR. GROSSMAN: Right.

1 MR. SPICER: And here, we're dealing with --

2 MR. GROSSMAN: Right.

3 MR. SPICER: -- that lot which is just at 50 feet.  
4 Given the facts and the history of the ordinances involved,  
5 we could not find any circumstance whereby this permit  
6 should have been approved to allow for a five foot side yard  
7 given the width of the lot.

8 MR. GROSSMAN: What about what Mr. Kadow refers  
9 to, subdivision regulations? What are the regulations? Is  
10 there anything under --

11 MR. SPICER: I think when he was referring to  
12 subdivision regulations, he was referring, probably, to the  
13 old ordinances, zoning ordinances.

14 MR. GROSSMAN: I see.

15 MR. SPICER: That was my understanding of what he  
16 referred to as subdivision regulations. I don't think he  
17 was talking about actually chapter 50, subdivision  
18 regulations but rather zoning ordinance provisions, if you  
19 would.

20 MR. GROSSMAN: Okay.

21 MR. SPICER: But, we also wanted to, and he has  
22 pointed out to you, but we also wanted to bring to your  
23 attention to the extent that it may have some bearing on  
24 your decision. The provisions that are in the Courts and  
25 Judicial Proceedings article, Section 5-114 to the extent

1 that they may come into play here as to whether or not,  
2 they, in and of themselves, create some type of an exception  
3 to the, what otherwise might require a variance.

4 MR. GROSSMAN: Well, what's the Department of  
5 Permitting Services -- so, if I understand you correctly,  
6 the Department of Permitting Services is saying that the  
7 permit was incorrectly issued --

8 MR. SPICER: But otherwise valid.

9 MR. GROSSMAN: -- but otherwise valid. I'm not  
10 sure what that means yet.

11 MR. SPICER: Well, just like the statute says.  
12 That was the only impediment or their error in this  
13 issuance, we feel.

14 MR. GROSSMAN: Okay. The side yard setbacks.

15 MR. SPICER: To the extent, the side yard setback.  
16 Yes.

17 MR. GROSSMAN: Okay. And has your research  
18 indicated why it was issued in spite of the setbacks?

19 MR. SPICER: I know from just having been with the  
20 Department for a number of years and having people there  
21 when I arrived explain to me some of the practice, if you  
22 would, that seem to have been taking place for a period of  
23 time before I arrived. One of which was --

24 MR. GROSSMAN: Well, if you're going to talk about  
25 that, I think I'll -- let me put you under oath just so

1 we're, I don't know. Do you swear or affirm to tell the  
2 truth, the whole truth, and nothing but the truth under  
3 penalty of perjury?

4 MR. SPICER: Yes. I do.

5 MR. GROSSMAN: Okay. You're in.

6 MR. SPICER: Okay.

7 MR. GROSSMAN: And for what you've said already,  
8 you adopt that.

9 MR. SPICER: I do. I do.

10 MR. GROSSMAN: Okay.

11 MR. SPICER: Yes. When I first got there, the  
12 director was Robert Hubbard. Okay? And I started looking  
13 into this issue of how we're coming up with these reduced  
14 side yards.

15 MR. GROSSMAN: Right.

16 MR. SPICER: Okay. And there had not been much  
17 attention paid to the 1928 ordinance. As a matter of fact,  
18 it took quite a while to even find a copy of it.

19 MR. GROSSMAN: Right now, it's in the zoning  
20 ordinance attached to the current zoning ordinance.

21 MR. SPICER: Exactly. And to add further to the  
22 confusion, if people went over to the bar library to get a  
23 copy of the original, what was known as the original zoning  
24 ordinance, they were given the 1930s zoning ordinance.  
25 Okay. Well, we finally tracked down what is identified now

1 as the 1928, the original zoning ordinance.

2 MR. GROSSMAN: Right.

3 MR. SPICER: Okay. And then, you know, beginning  
4 to, and Mr. Hubbard had been with the Department quite a  
5 period of time before I arrived. Okay? And then before he  
6 became director. So, we started talking about how, when we  
7 were doing this, and approving these reduced side yards in  
8 certain situations like this and --

9 MR. GROSSMAN: You're about to give hearsay also.

10 MR. SPICER: Yes.

11 MR. GROSSMAN: So, I'm going to see if there's an  
12 objection to that. If there isn't, I'll listen to it. Do  
13 you object to hearing this background?

14 MR. KADOW: No.

15 MS. KADOW: No.

16 MR. GROSSMAN: Okay. Go ahead, Mr. Spicer.

17 MR. SPICER: Okay. Well, there was a combination  
18 of problems. Number one, the 1928 zoning ordinance, the  
19 original zoning ordinance was basically not even considered  
20 at all. What the people in the Department were  
21 concentrating on was the 1930, okay, as being the original.  
22 All right? And what they were doing was essentially not  
23 paying close attention to the language of the 1930 zoning  
24 ordinance that spoke about the lot being less than 50 feet.

25 MR. GROSSMAN: 50 feet.

1           MR. SPICER: They were approving routinely lots at  
2 50 feet.

3           MR. GROSSMAN: Okay.

4           MR. SPICER: And I think that is the basis that  
5 this permit probably got approved and that was, I think,  
6 fairly standard practice based upon what Mr. Hubbard had  
7 told me when I first started looking into this.

8           MR. GROSSMAN: Okay. So, they were approving lots  
9 at 50 feet --

10          MR. SPICER: At 50 feet.

11          MR. GROSSMAN: -- that actually had reduced  
12 setbacks --

13          MR. SPICER: They were --

14          MR. GROSSMAN: -- even though they shouldn't have  
15 approved them because --

16          MR. SPICER: Yes.

17          MR. GROSSMAN: -- unless they were 50 feet?

18          MR. SPICER: Exactly.

19          MR. GROSSMAN: Okay.

20          MR. SPICER: They were reading it as 50 feet or  
21 less.

22          MR. GROSSMAN: Okay.

23          MR. SPICER: Is basically what they were doing  
24 even though that was contrary to the language of the  
25 ordinance.



1           MR. GROSSMAN: Okay. And so as long as you're  
2 here acting, I take it, as the attorney for the Department  
3 of Permitting Services.

4           MR. SPICER: Correct.

5           MR. GROSSMAN: Let me ask you the position of the  
6 Department of Permitting Services regarding the impact, if  
7 any, of Section 5-114B 2 and 3 on this situation. B2 is the  
8 one that says a government entity may not initiate an action  
9 or proceeding arising out of the failure of a building or  
10 structure to comply with the setback line restriction more  
11 than three years after the date on which the violation first  
12 occurred if the building or structure was constructed or  
13 reconstructed. Do you think that that applies under DPS  
14 given that this is not initiated by the government?

15           MR. SPICER: Well, I understand that the  
16 application wasn't initiated by the government. My concern  
17 was that the, perhaps, the denial of the application because  
18 of the failure to comply with the side yard requirements was  
19 -- if not a government action, it was tantamount to a  
20 government action to say well, you're being denied your  
21 ability to obtain an accessory apartment special exception.  
22 Now, if there were other issues, I would, you know,  
23 recommend against this. That's a different story. If this  
24 was the only thing, there would be some concern.

25           MR. GROSSMAN: Well, I understand there's a

1 fairness issue here that you're pointing to. My question is  
2 regardless of --

3 MR. SPICER: And I don't know that I could say  
4 that the Department has a position on it. Okay?

5 MR. GROSSMAN: Okay. Ms. Scala-Demby, does the  
6 Department have a position as to the interpretation of this  
7 section, 5-114B 2 under the Maryland code?

8 MS. SCALA: I'm not sure that the Department has a  
9 position. No.

10 MR. GROSSMAN: Okay. All right. What about 5-  
11 114B 3? And that is for purposes of paragraph 2. I don't  
12 know if that's 2I or 2L.

13 MS. SCALA: I.

14 MR. GROSSMAN: 2I?

15 MS. SCALA: Uh-huh.

16 MR. GROSSMAN: Okay. 2I of this subsection. And  
17 not withstanding any other provision of state or local law  
18 to the contrary, a building permit that was otherwise  
19 validly issued except that the permit wrongfully permitted  
20 the building or structure to violate a setback line  
21 restriction shall be considered a valid building permit. Do  
22 you think that has application here or is that not, you  
23 know, what is the impact, I guess, Mr. Spicer, on this case  
24 then?

25 MR. SPICER: Well, I think it has an impact if you

1 go to the provision, and I don't have it in front of me, but  
2 the provision for the accessory apartment special exception.

3 MR. GROSSMAN: Yes.

4 MR. SPICER: The land use section? If you could  
5 read that?

6 MR. GROSSMAN: Yes. This is zoning ordinance  
7 Section 59-G-2.00C 1.

8 MR. SPICER: Right.

9 MR. GROSSMAN: A minimum lot size of 6,000 square  
10 feet. I'll read the whole thing.

11 MR. SPICER: Sure.

12 MR. GROSSMAN: Is 6,000 square feet except where  
13 the minimum lot size of the zone is larger. A property  
14 consisting of more than one record lot, including a fraction  
15 of a lot, is to be treated as one lot if it contains a  
16 single one family detached dwelling lawfully constructed  
17 prior to October 1967. All other development standards of  
18 the zone must also apply including setbacks, lot width, lot  
19 coverage, building height, and the standards for an  
20 accessory apartment building in the case of conversion of  
21 such a building.

22 MR. SPICER: I don't know that -- I suppose an  
23 argument could be made that this may be some exception.  
24 That may be local law to the contrary. I don't know, and  
25 I'm not sure the Department wants to take a position on

1 that.

2 MR. GROSSMAN: All right.

3 MR. SPICER: Other than to, you know, to the  
4 extent and I'm sure the -- knowing the hearing examiner will  
5 take due consideration of all of the potentials.

6 MR. GROSSMAN: Right. Ms. Scala-Demby, do you  
7 have anything to add to that recitation by Mr. Spicer?

8 MS. SCALA: No. I don't.

9 MR. GROSSMAN: All right. Anything further that  
10 you guys wanted to say on --

11 MR. SPICER: No. No.

12 MR. GROSSMAN: Okay. All right. Now, Mr. and Ms.  
13 Kadow, you can ask any questions of Mr. Spicer or Ms. Scala-  
14 Demby within the scope of their direct testimony.

15 MR. KADOW: Well, my only question is more of a  
16 sense of fairness to the applicant. We did everything  
17 right.

18 MS. KADOW: Or tried to.

19 MR. KADOW: And played the game the way it's  
20 supposed to be played, going through the process, the  
21 approval, yada, yada, yada, and we're still not made  
22 anywhere near whole on this thing as far as the right to  
23 enjoy the property as subject to a zone that we feel that we  
24 are, being on fixed income --

25 MR. GROSSMAN: Let me interrupt you for a second.

1 The question is do you have any questions of them. I'm  
2 going to give you a chance to make your argument that you  
3 want or your closing statement or add additional testimony  
4 but first I have to know if you have any questions of these  
5 witnesses. This is cross-examination just like in a  
6 courtroom. You have an opportunity to cross examine the  
7 witnesses.

8 MR. KADOW: Ellen, do you have questions?

9 MS. KADOW: What I understood, Mr. Spicer --

10 MR. SPICER: Yes.

11 MS. KADOW: -- to say is that the -- as far back  
12 as they can go is 1928 as far as --

13 MR. SPICER: That was the first zoning ordinance

14 MS. KADOW: Code? Or zoning ordinance?

15 MR. SPICER: The original in Montgomery County.  
16 1928.

17 MS. KADOW: And they're just -- is it -- are you  
18 saying that there were none existing before that or they're  
19 not -- they're just kind of lost in --

20 MR. SPICER: No. There were no zoning ordinances  
21 prior to that in 1928.

22 MS. KADOW: Prior to that. Okay.

23 MR. GROSSMAN: And also I might add that there are  
24 portions of the zoning ordinance that create exemptions from  
25 the zoning ordinance. When lots were recorded prior to the

1 zoning ordinance, they refer back to the 1928 ordinance.  
2 When they say compliance in those instances, they refer back  
3 to the 1928 ordinance for things that occurred before it.  
4 And so if the current zoning ordinance doesn't apply, they  
5 would refer you back to the 1928 ordinance which also does  
6 not have an exception that covers what you say, and I looked  
7 at that 1928 ordinance, and it only talks about lots that  
8 are less than 50 feet in width as allowing a reduced side  
9 yard setback.

10 MS. KADOW: But the fact that this lot was  
11 subdivided in 1898 or --

12 MR. GROSSMAN: For those cases in which --

13 MS. KADOW: Has no bearing.

14 MR. GROSSMAN: -- subdivision occurred prior to  
15 the 1928 ordinance; the portions of the current zoning  
16 ordinance that consider those exceptions refer back to the  
17 1928 ordinance.

18 MS. KADOW: Okay. That's as far back as it would  
19 go.

20 MR. SPICER: Yes. If the general position of the  
21 zoning department treated the language well, like I  
22 originally thought that it might have been treated as a 50  
23 foot lot as opposed to 50 feet less or less than 50 feet and  
24 it was a way of doing business, a way of life with the  
25 zoning ordinance, why shouldn't the applicant that made this

1 information available -- it makes more sense to me now that  
2 this was going on, and everybody that was probably involved  
3 in it probably knew it was a done deal, you know. I don't  
4 think there was any malice involved but if that's the way  
5 the zoning department does business, routinely does  
6 business--

7 MR. GROSSMAN: Or did business, the Department of  
8 Permitting Services. Right.

9 MS. KADOW: Or did business.

10 MS. SCALA: Yeah. We don't do it anymore.

11 MR. GROSSMAN: Do not do it anymore.

12 MR. SPICER: -- did business, why shouldn't that  
13 have merit if it's a way of life, if it's condoned, if  
14 it's --

15 MR. GROSSMAN: Well, I understand your argument,  
16 and it does protect you in certain ways. That is the  
17 statute, the Maryland statute, says they can't come back now  
18 and make you tear down your house because of this, if I  
19 understand correctly, Mr. Spicer. Correct?

20 MR. SPICER: Yes. We certainly couldn't initiate  
21 any action.

22 MR. GROSSMAN: Right. Even though the building  
23 permit was improvidently issued, they still can't come back  
24 and do that, and you've had the benefit of having the  
25 additional width on your house, I guess you'd say, as a

1 result of that over the years. The other question, however,  
2 is whether given that the zoning ordinance does not -- you  
3 don't meet the development standards, whether we can ignore  
4 the language of the zoning ordinance and grant you something  
5 new which is a special exception you're asking for, for  
6 property that does not meet the setback requirements which  
7 is a different issue, and it's not that I'm insensitive to  
8 the fairness issue, and that's why I say that it may be  
9 something that can be worked out in terms of a variance  
10 application. It may, you know, may not be something I can  
11 deal with in terms of my requirements to follow the zoning  
12 ordinance. So --

13 MR. KADOW: Mr. Spicer?

14 MR. SPICER: Yes, sir?

15 MR. KADOW: I just had one more question.

16 MR. SPICER: Sure.

17 MR. KADOW: Let me get my thoughts collected here.  
18 Wait a minute. I guess I'll pass on that. He probably  
19 wouldn't know it anyway.

20 MR. GROSSMAN: Well, if comes to you before they  
21 leave, we'll let you ask it whenever.

22 MR. KADOW: Oh. It just came to me.

23 MR. GROSSMAN: Happens to me all the time.

24 MS. KADOW: That's a senior moment.

25 MR. KADOW: I had an epiphany here. So, the



1 position of your office, it's a Montgomery county office,  
2 you have no position. Is that what or you have a position  
3 or not?

4 MR. SPICER: I'm not sure I understand the  
5 question. We're just trying to relate to the hearing  
6 examiner what we have available in our files and how it was  
7 that the property may have been and in all probability was  
8 approved with a five foot side yard as opposed to what  
9 should have been seven.

10 MR. KADOW: Okay. So, then that --

11 MR. SPICER: We're not here to advocate, you know,  
12 a position in reference to your --

13 MS. KADOW: Particular situation.

14 MR. SPICER: -- particular situation. We just  
15 wanted to make sure and, as you brought it to the attention  
16 of the hearing examiner, the provisions of the state law  
17 that may come into play or may, depending on how Mr.  
18 Grossman feels about it in terms of his recommendations,  
19 what impact, if any, the state law provisions have. We just  
20 wanted to make sure that he was aware of them, that they  
21 were brought to his attention which you had already done.

22 MR. KADOW: Okay. Fine. That's all I have.

23 MR. GROSSMAN: Okay.

24 MR. KADOW: Thank you.

25 MR. GROSSMAN: Mr. Spicer, you said you had copies

1 of documents. Check if you would to make sure that I have  
2 copies of everything that you have there.

3 MR. SPICER: Well, we have --

4 MR. GROSSMAN: So, bring up whatever you've got.

5 MR. SPICER: This is part of the file? Or, let me  
6 see.

7 MS. SCALA: This I got from Kathy.

8 MR. SPICER: We have the, I guess, the -- this is  
9 coming again, and printed out of our records, it was the  
10 location survey of 7/21/87.

11 MR. GROSSMAN: Let's see. What's this?

12 MR. SPICER: You have maybe a little bit better  
13 copy.

14 MR. GROSSMAN: Yes. I do have a better copy than  
15 you do.

16 MR. SPICER: Okay.

17 MR. GROSSMAN: So there. Oh. But, actually,  
18 yours says final --

19 MR. SPICER: Final location.

20 MR. GROSSMAN: -- location on 7/21/87. Mine is  
21 the walk check on 11/24/86.

22 MR. SPICER: That's --

23 MR. GROSSMAN: So, let's --

24 MR. SPICER: Maybe they're different documents.

25 MR. GROSSMAN: And so this is the, yeah. They are

1 slightly different. So, this is the document that was  
2 attached to something that indicated, well, it indicates to  
3 you a five foot side yard setback or is there something  
4 else?

5 MR. SPICER: Yes.

6 MR. GROSSMAN: Okay.

7 MR. SPICER: That's what indicated --

8 MR. GROSSMAN: All right. Let's make this Exhibit  
9 19.

10 MR. SPICER: I guess it's off of our record trail.

11 MS. SCALA: Yes.

12 MR. GROSSMAN: Let's see. Exhibit 19 is, yeah.  
13 It's not called the, I mean, the copy I have says house  
14 location plat. This one does, oh. Part of it is cut off on  
15 this.

16 MS. SCALA: That was included to show that Mr.  
17 Pisani had signed off. I think his signature is on that  
18 sheet.

19 MR. SPICER: He initialed off on it.

20 MR. GROSSMAN: Okay. Oh. I see. Yes.

21 MS. SCALA: Do you see?

22 MR. GROSSMAN: On the copy that you have. Yes. I  
23 see it.

24 MR. SPICER: Yes.

25 MR. GROSSMAN: All right. So, I'll call this plat

1 DPS final dated 7/21/87, and that's Exhibit 19. Okay.

2 Anything else that you have, Mr. Spicer, that --

3 MR. SPICER: That was all.

4 MR. GROSSMAN: Okay. All right. If we don't have  
5 any other questions for Mr. Spicer and Ms. Scala-Demby, I  
6 would propose to let them go and then we would take a quick  
7 break, let you get the affidavit of posting executed and  
8 make a copy of your deed, and we'll come back here, and  
9 we'll go through the rest of the case, have you identify  
10 your plans and so on. So, we can at least get that done.

11 MS. KADOW: Thank you.

12 MS. SCALA: You're welcome.

13 MR. GROSSMAN: Anything else from Ms. Scala-Demby  
14 or Mr. Spicer? And hearing nothing, all right. Thank you  
15 very much, folks, for coming down, appreciate it. Okay.  
16 And we'll take a five minute break, and if you hand me the  
17 deed, I'll run a copy, and if you go next door and ask my  
18 staff, they'll give you --

19 MS. KADOW: Can I ask you a favor? I broke my hip  
20 and I'm not much good anymore.

21 MR. GROSSMAN: And if you, oh. My staff is here  
22 with the --

23 MS. KADOW: Oh. Look at you.

24 MR. GROSSMAN: And yes. This room is wired, by  
25 the way, so everything that is said in here can be monitored

1 in other rooms. So --

2 MS. KADOW: We just need to sign?

3 MR. GROSSMAN: Yeah. Fill it in and then go right  
4 down the hall here to the Board of Appeals Office --

5 MS. KADOW: And have it notarized.

6 MR. GROSSMAN: -- and sign it in front of the  
7 notary and then bring it back here.

8 MR. KADOW: Okay. At the same time we can ask for  
9 a variance.

10 MS. KADOW: Information on the variance.

11 (OFF THE RECORD)

12 (ON THE RECORD)

13 MR. GROSSMAN: All right. We're ready to go back  
14 on the record. And I've been handed an affidavit of posting  
15 which has been duly executed. I'll make that Exhibit 20,  
16 and I also have a copy of the deed to the premises which is  
17 Exhibit 21, and I've returned the original to Ms. Kadow.  
18 Also, while I've got it here, since I printed it out, I'll  
19 put in the Maryland tax records showing your ownership.  
20 It's called Maryland SDAT. Tax record variance site.  
21 That's Exhibit 22. Okay. Now, let's go back to identifying  
22 certain documents if we can. All right. Mr. Kadow, I'll  
23 show you Exhibit 3. Is that a fair copy of your site plan  
24 for this site?

25 MR. KADOW: (No audible response.)

1           MR. GROSSMAN: Okay. It accurately depicts the  
2 site as it exists now?

3           MR. KADOW: Yes.

4           MR. GROSSMAN: Okay. Exhibit 4. That's your  
5 statement of intent. Exhibit 5 reports to be a floor plan.  
6 Is that an accurate depiction of the floor plan of the  
7 accessory apartment?

8           MR. KADOW: Yes.

9           MS. KADOW: Proposed, yes.

10          MR. GROSSMAN: Proposed. All right. You have not  
11 built it out yet?

12          MR. KADOW: No.

13          MS. KADOW: Not all of it. No.

14          MR. KADOW: We're waiting for approval.

15          MR. GROSSMAN: Okay. So, I take it it's not  
16 occupied at this --

17          MR. KADOW: No.

18          MR. GROSSMAN: All right. Exhibit 6. Written as  
19 landscape and lighting plan. Does Exhibit 6 fairly show the  
20 current location of all plantings?

21          MR. KADOW: Isn't that the submission we made?

22          MS. KADOW: Yes. You're going through the  
23 documents that we submitted. Correct?

24          MR. GROSSMAN: Right. I'm just identifying them  
25 for the record.

1 MR. KADOW: Okay.

2 MR. GROSSMAN: Just to make sure they're  
3 accurate. And then you have attached a list of existing  
4 trees and then you also have a list of illumination and  
5 locations on there. Is that correct?

6 MR. KADOW: Correct.

7 MS. KADOW: Correct.

8 MR. GROSSMAN: Okay. All right. Now, you have  
9 some photographs you submitted as Exhibit 9. The top one is  
10 labeled front main house. Then the middle one, entrance to  
11 accessory apartment, and the bottom one, rear of main house.  
12 Do those photos accurately depict the residence as it exists  
13 now?

14 MR. KADOW: Yes.

15 MS. KADOW: Yes.

16 MR. GROSSMAN: All right. And who took these  
17 photos?

18 MR. KADOW: I did.

19 MR. GROSSMAN: All right. And about when were  
20 they taken, approximately?

21 MR. KADOW: Just prior to submitting our  
22 information. Six months ago.

23 MR. GROSSMAN: Okay. All right. So, that would  
24 have been kind of mid-2011.

25 MR. KADOW: Yes.

1           MR. GROSSMAN: All right. And the entrance to the  
2 accessory apartment that's depicted in the middle photo,  
3 where on the home is that?

4           MR. KADOW: That would be the back side, the west  
5 side.

6           MR. GROSSMAN: Okay.

7           MR. KADOW: It's the same area that the setback  
8 problems occur.

9           MR. GROSSMAN: Okay. So, it's a side of the  
10 house.

11          MR. KADOW: It's access to the rear. That's to  
12 the rear. Yes. This is the west side of the house, rear.

13          MS. KADOW: Rear. It's of the rear of the house.

14          MR. GROSSMAN: All right. So, the entrance to  
15 the accessory apartment is in the rear of the house.

16          MR. KADOW: Yes.

17          MS. KADOW: Correct.

18          MR. GROSSMAN: The setback problems are on the  
19 side of the house.

20          MS. KADOW: Yes. He's just locating --

21          MR. KADOW: But that's the side entry there, isn't  
22 it?

23          MS. KADOW: It's a side entry.

24          MR. GROSSMAN: I don't know. You have to tell  
25 me.



1           MR. KADOW: Yeah. It is. It's a side entry; the  
2 back portion of the house.

3           MR. GROSSMAN: Okay.

4           MR. KADOW: And there's a patio back there, too,  
5 that they go over and then go down into the --

6           MR. GROSSMAN: I think the best thing to do. On  
7 the site plan, Exhibit 3, will you identify where it is?

8           MS. KADOW: Let me show you.

9           MR. GROSSMAN: That the, you know -- Ms. Caudillo  
10 will give you the -- just mark on that where the entrance is  
11 proposed to the -- not in yellow marker. In ink.

12          MS. KADOW: In ink

13          MR. GROSSMAN: Where the entrance is to the --

14          MR. KADOW: Right there.

15          MS. KADOW: It's right here.

16          MR. GROSSMAN: -- accessory apartment.

17          MR. KADOW: Yeah.

18          MS. KADOW: So, it's right here.

19          MR. KADOW: Yeah.

20          MS. KADOW: He put an X there --

21          MR. GROSSMAN: Okay.

22          MS. KADOW: -- where the entrance is.

23          MR. KADOW: It goes in the footprint. It's not  
24 outside the footprint.

25          MR. GROSSMAN: Okay.

1           MR. KADOW:  It's recessed.  It's stairs and a  
2 wall.

3           MR. GROSSMAN:  Okay.  The location that was marked  
4 with an X is right next to the deck.

5           MR. KADOW:  Yes.

6           MR. GROSSMAN:  Okay.

7           MR. KADOW:  Attached to the deck.

8           MS. KADOW:  That's where it begins and it goes  
9 down.

10          MR. GROSSMAN:  Okay.  And I'm going to write on  
11 there, entrance to accessory apartment.  Okay.  Where you  
12 put the X.  All right.  Now, there's also some photographs  
13 in the staff report on page 3.  That's the technical staff  
14 report.  Exhibit 14.  Is that a fair picture of the front of  
15 your house?

16          MR. KADOW:  Sure.

17          MS. KADOW:  Yes.

18          MR. GROSSMAN:  Okay.  That's on page 3 and then on  
19 page 5 there's an aerial photo.  Does that correctly  
20 identify your house?

21          MR. KADOW:  Yes.

22          MS. KADOW:  Yes.

23          MR. GROSSMAN:  Okay.  Then on page 6, there are  
24 two photographs.  One looks very similar, if not identical,  
25 to the photo you have put in the top one for the entrance to

1 the accessory apartment. The bottom photo. What is that  
2 exactly showing?

3 MR. KADOW: That's the deck walking down. That's  
4 the deck stairs to the entrance to the accessory apartment.

5 MR. GROSSMAN: Okay. So, the bottom picture  
6 that's -- you described the bottom picture on page 6 of this  
7 technical staff report?

8 MR. KADOW: Yes.

9 MR. GROSSMAN: Okay.

10 MR. KADOW: She never thought about that.

11 MS. KADOW: I know.

12 MR. GROSSMAN: Okay. Now, let me ask you a  
13 question about the lighting. You've described a variety of  
14 different lighting. Is there going to be any lighting added  
15 to the exterior of your home?

16 MR. KADOW: No. All the lights are there now.  
17 There's a lot of lights.

18 MR. GROSSMAN: And are they all residential in  
19 character?

20 MR. KADOW: Yes. Well, there's a three bulb  
21 spotlight on top of the house.

22 MR. GROSSMAN: All right.

23 MR. KADOW: There's the little overhang down in  
24 the entrance itself and there's a big, what do you call it?  
25 Kettle light at the rear of the patio. Right on the back.

1 And then there's a rear door site that when they come up the  
2 driveway --

3 MR. GROSSMAN: All right.

4 MR. KADOW: We have light --

5 MR. GROSSMAN: I'm sorry. I didn't mean to  
6 interrupt you.

7 MR. KADOW: We have light all the way through  
8 there.

9 MR. GROSSMAN: All right. The reason I ask the  
10 question is that one of the standards we have to look to is  
11 whether or not there is any light escaping at the side or  
12 rear lot lines that would exceed 0.1 foot candles. That's a  
13 code provision for residential zones, and so if you're not  
14 adding any light, I guess that has a diminished impact on  
15 what we look -- we also look to what the staff report says,  
16 and they say the use will cause no objectionable  
17 illumination or glare. So --

18 MS. KADOW: Yeah. I think that's true.

19 MR. GROSSMAN: There is a more technical standard  
20 that's actually in the code of 0.1 foot candles. All right.  
21 And do you have, in terms of parking. Would you anticipate  
22 that the tenants of the accessory apartment would be able to  
23 use your driveway? I notice there are three spaces if I  
24 understand correctly on your driveway?

25 MR. KADOW: Well, the driveway measures 125 less

1 25, about 100 feet, and we have adequate parking out front.  
2 We have two spaces directly in front of our house and then  
3 all the way down to the corner there's spaces that -- it's  
4 the side of another house that's not used. So, there's  
5 parking pretty much wherever.

6 MR. GROSSMAN: Just ample parking.

7 MR. KADOW: Yeah. Our goal is to take a single  
8 tenant with one car. No more than one car.

9 MR. GROSSMAN: All right.

10 MR. KADOW: Not that --

11 MR. GROSSMAN: And would that single tenant be  
12 parking in your driveway or on the street?

13 MR. KADOW: Probably on the street.

14 MR. GROSSMAN: Okay. And your driveway can hold  
15 three cars. Is that fair to say?

16 MR. KADOW: Oh. It can hold five, I think.

17 MR. GROSSMAN: All right. Do you have a garage,  
18 too?

19 MR. KADOW: Yeah. Uh-huh.

20 MR. GROSSMAN: All right. And so, if the Board of  
21 Appeals required it you would have room for somebody to  
22 park, a tenant to park, in your driveway?

23 MS. KADOW: Technically, yes.

24 MR. KADOW: If it's a condition. Yeah.

25 MR. GROSSMAN: You prefer not.

1           MR. KADOW: We don't think that -- there's more  
2 than adequate parking --

3           MR. GROSSMAN: Okay.

4           MR. KADOW: -- in front of that house.

5           MR. GROSSMAN: All right.

6           MR. KADOW: But, if it's a condition, we can  
7 comply. Yes.

8           MR. GROSSMAN: Okay. All right. Now, as I  
9 promised you, I'll give you the opportunity to say anything  
10 else that you want to say before I turn to Ms. Caudillo to  
11 tell about her reports. Is there anything else you wanted  
12 so say?

13          MR. KADOW: Not right now. No.

14          MR. GROSSMAN: Okay. All right. Ms. Caudillo,  
15 will you state your full name and your occupation for the  
16 record?

17          MS. CAUDILLO: Cynthia Caudillo, housing code  
18 inspector.

19          MR. GROSSMAN: All right. And did you have  
20 occasion, as a result of your occupation, to inspect the  
21 subject site here?

22          MS. CAUDILLO: Yes, sir.

23          MR. GROSSMAN: And when did you do that?

24          MS. CAUDILLO: January 26, 2012.

25          MR. GROSSMAN: All right. And did you write a

1 report as a result of your inspection?

2 MS. CAUDILLO: Yes, sir.

3 MR. GROSSMAN: And is that the report dated  
4 January 31, 2012 in the record as Exhibit 17A?

5 MS. CAUDILLO: Yes, sir.

6 MR. GROSSMAN: All right. And will you describe  
7 for us your findings?

8 MS. CAUDILLO: Yes.

9 MR. GROSSMAN: Are those findings fairly  
10 summarized in that report?

11 MS. CAUDILLO: Yes, sir.

12 MR. GROSSMAN: All right. And do you have  
13 anything else that you want to add on to those findings?

14 MS. CAUDILLO: No, sir.

15 MR. GROSSMAN: All right. Is there any reason if  
16 these findings are followed that, and I'm not dealing with  
17 the variance issues that we talked about here but from the  
18 housing code perspective, is there any reason why this  
19 special exception should not be granted if the applicant  
20 complies with all of the requirements in Exhibit 17A?

21 MS. CAUDILLO: No, sir.

22 MR. GROSSMAN: All right. And when you inspected  
23 the premises, did you have an opportunity to look about  
24 parking on the streets?

25 MS. CAUDILLO: Yes. There --

1           MR. GROSSMAN: And what is the situation for  
2 parking on the streets?

3           MS. CAUDILLO: There is parking available on both  
4 sides of the street.

5           MR. GROSSMAN: All right.

6           MS. CAUDILLO: So, there's ample parking.

7           MR. GROSSMAN: Okay. Now, if I understood your  
8 findings of 473.47 square feet of habitable space. You say  
9 two occupants maximum. Sometimes when I've seen reports  
10 from housing, they've had a different figure for family  
11 occupants versus others. Yours did not make that  
12 distinction. Is that so it is just straight two, whether  
13 they're family or not, it says two people may occupy?

14          MS. CAUDILLO: Yes, sir.

15          MR. GROSSMAN: Okay. And let's see if I have  
16 anything else. Oh. Are there other accessory apartments in  
17 the area?

18          MS. CAUDILLO: No, sir.

19          MR. GROSSMAN: Okay. All right. Anything else  
20 you wanted to add?

21          MS. CAUDILLO: No. Thank you.

22          MR. GROSSMAN: All right. Did you have any  
23 questions of Ms. Caudillo?

24          MR. KADOW: I don't.

25          MR. GROSSMAN: All right. Okay. Now, anything



1 else you wanted to add to the mix here?

2 MR. KADOW: Ellen, did you want say anything?

3 MS. KADOW: Is this the conclusion?

4 MR. GROSSMAN: Yes. This will be the conclusion  
5 and what will happen is after the hearing concludes here,  
6 we'll keep the record open for whatever time, whatever  
7 reasonable time, you folks want to make a decision as to  
8 whether or not you want to request a variance and then we'll  
9 close the record then. If you decide no, then I'll make my  
10 -- I'll write a report and recommendation which is due  
11 within 30 days after the record closes.

12 MS. KADOW: Okay.

13 MR. GROSSMAN: And then you have 10 days from the  
14 date we issue our report, and we send you a letter when we  
15 issue the report, and it gives you a website to go to to  
16 read the entire report. The letter just tells you which way  
17 I recommended and if I recommended approval, what conditions  
18 I recommended. The report, they're usually pretty extensive  
19 and an accessory apartment is probably about 30 pages long.

20 MS. KADOW: Okay.

21 MR. GROSSMAN: If you have a problem getting it  
22 off the website, we can send you the report itself if that's  
23 a problem for you but you can tell my staff that. That's  
24 the way it works.

25 MS. KADOW: I have a couple of questions.

1 MR. GROSSMAN: Yes, ma'am.

2 MS. KADOW: Now, do you make the decision on  
3 whether it's accepted or not or does this go to a board?

4 MR. GROSSMAN: No. The Board of Appeals makes the  
5 decision. I write a report which summarizes the evidence,  
6 and I make a recommendation and then the Board of Appeals  
7 makes the decision.

8 MS. KADOW: I see.

9 MR. GROSSMAN: But they cannot consider evidence  
10 outside the report. Whatever the evidence is what comes in  
11 here, and the only thing they can consider in addition to  
12 that is oral argument if you were to request it within 10  
13 days after my report is issued. Not from when you receive  
14 it but within 10 days after it's issued, and if you request  
15 oral argument, they can grant it or not. They usually hear  
16 these matters at a work session. They don't hear it at a  
17 formal hearing because they're not receiving new evidence,  
18 and you'll have to contact them as soon as you get the  
19 notification of the report being issued, you should contact  
20 the Board of Appeals and find out what work session it's  
21 going to be on because I don't know that they send  
22 additional notice out of their work sessions.

23 MS. KADOW: Okay.

24 MR. GROSSMAN: So, if you wanted to have oral  
25 argument, then you would want to know.

1 MS. KADOW: You have to act quickly.

2 MR. GROSSMAN: They can either grant it or not,  
3 the oral argument. They don't have to grant oral argument.  
4 That's up to them.

5 MS. KADOW: Okay.

6 MR. GROSSMAN: And they usually vote. If they  
7 don't grant oral argument, they usually vote at that point  
8 on the special exception request. It takes four votes to  
9 grant a special exception. If they vote at that time then  
10 it takes a couple of weeks, two or three weeks, for the  
11 actual formal resolution to issue. You should keep the sign  
12 posted there until you get the resolution from the Board of  
13 Appeals.

14 MS. KADOW: Okay.

15 MF: If there were opposition, you'd have to keep  
16 it for another 30 days thereafter. But, since there isn't,  
17 you should keep it posted until you get the resolution.

18 MS. KADOW: Okay. I guess the only thing that we  
19 would say is that we put into the letter the reason we  
20 applied for this is that, you know, we're aging, and we'd  
21 like to age in place if we could and with the expenses that  
22 we have, this seemed like a good plan for us, and the other  
23 aspect would be that it offers low cost housing to residents  
24 in Montgomery County that there is none available in our  
25 area. So, we would like to ask your fairness in solving

1 this matter to see if you could justify granting this  
2 special exception.

3 MR. GROSSMAN: Okay. Well, I am bound by the  
4 statutes. So, it's going to depend on the legal  
5 interpretation more than the fairness issue because as much  
6 as I might want to recommend granting it, I am bound, and I  
7 cannot go beyond my authority.

8 MS. KADOW: I understand.

9 MR. GROSSMAN: So, that's really what that amounts  
10 to. That's why I had my office call you early on to tell  
11 you this problem and that, you know, you might want to put  
12 this hearing off until you requested a variance because of  
13 the issue that was raised by technical staff. But, so we  
14 try to be as fair as we can to people because I understand  
15 your situation here, and it is unfortunate that this has  
16 arisen but there's a statute, and I can't change the  
17 statute. But, that's why they provide a means to vary from  
18 the statute in appropriate cases, if you meet those  
19 requirements. Did you get, from the Board of Appeals --

20 MR. KADOW: We're picking it up after the meeting  
21 here.

22 MR. GROSSMAN: Oh. Okay. How much time do you  
23 want in order to make your decision as to --

24 MR. KADOW: We're not going to take too much time,  
25 I don't think.

1 MS. KADOW: No.

2 MR. KADOW: We just have to go over the criteria  
3 for the variance.

4 MR. GROSSMAN: Right.

5 MR. KADOW: And just make a decision based on  
6 that.

7 MR. GROSSMAN: Okay.

8 MR. KADOW: So, you know, I wouldn't say over a  
9 couple of weeks. Would you?

10 MS. KADOW: No.

11 MR. GROSSMAN: Okay. So, today is the 2nd. How  
12 about by Friday the 17th? Would that be good for you?

13 MS. KADOW: Yeah.

14 MR. KADOW: Yeah. That's good.

15 MR. GROSSMAN: Okay.

16 MS. KADOW: And who do we contact then?

17 MR. GROSSMAN: You should either file or you can  
18 even email to me but I think the best thing is for you to  
19 file --

20 MS. KADOW: By that date?

21 MR. GROSSMAN: -- by that date a statement with my  
22 office as to whether or not you are going to be seeking a  
23 variance.

24 MR. KADOW: Pursuing it. Yeah.

25 MR. GROSSMAN: And then if you, at that point,

1 decide that you're not going to seek a variance then I will  
2 close the record as of that date, as of February 17. If, in  
3 fact, what you file by that date, even if you file earlier,  
4 the record will remain open because I have to announce here  
5 when I'm going to close it.

6 MS. KADOW: Uh-huh.

7 MR. GROSSMAN: The record will remain open until  
8 February 17th.

9 MS. KADOW: Okay.

10 MR. GROSSMAN: If, in fact, you file something  
11 earlier or by the 17th that says you are going to seek a  
12 variance, then I will keep the record open indefinitely  
13 until such time as the variance request is acted on.

14 MR. KADOW: Okay.

15 MS. KADOW: Okay.

16 MR. GROSSMAN: Because I really can't send this  
17 forward with a recommendation of approval subject to a  
18 variance as was suggested in the staff report because then  
19 it puts things out of whack because then the Board of  
20 Appeals has to act on it before they've acted on the  
21 variance. I would just leave the record open until such  
22 time as the variance is acted on and then we would notify  
23 you a closure of the record based on that and you could have  
24 whatever input you wanted. On the sign in sheet, did you  
25 indicate your email address?

1 MS. KADOW: Yes.

2 MR. GROSSMAN: You have an email address? Okay.

3 So--

4 MR. KADOW: Can we use email here to notify you?

5 MR. GROSSMAN: You can use email to notify.

6 MR. KADOW: Yeah. Why don't you take it down?

7 MS. KADOW: What would that be?

8 MR. GROSSMAN: All right. You can ask my staff  
9 and they'll give you the email address for the office.

10 MS. KADOW: Okay. Okay.

11 MR. GROSSMAN: Okay. And also we want to make  
12 sure that all of the exhibits that were filed I presume you  
13 want them admitted into evidence?

14 MR. KADOW: Yes.

15 MS. KADOW: Yes.

16 MR. GROSSMAN: So, Exhibits 1 through 22 and their  
17 sub parts are admitted into evidence, and any additional  
18 filings that will be made as a result of what we just talked  
19 about will also be admitted. Let me see if there is  
20 anything else here that needs to be covered. I don't think  
21 so. Anything further that you folks want to say?

22 MS. KADOW: No.

23 MR. GROSSMAN: All right. Well, thank you very  
24 much for coming down here, and I hope this all works out for  
25 you.

1 MS. KADOW: I do, too.

2 MR. KADOW: Thank you for your time.

3 MS. CAUDILLO: Thank you.

4 (Whereupon, at 12:15 p.m. the proceedings were  
5 concluded.)

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C E R T I F I C A T E

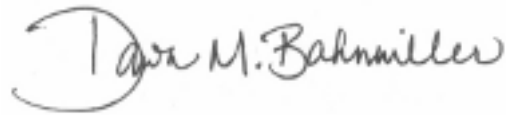
DEPOSITION SERVICES, INC., hereby certifies that  
the attached pages represent an accurate transcript of the  
electronic sound recording of the proceedings before the  
Office of Zoning and Administrative Hearings for Montgomery  
County in the matter of:

Petition of Brian A. Kadow and

Ellen L. Kadow No. S-2824

OZAH No. 12-13

By:

A handwritten signature in dark ink, reading "Dawn M. BahnMiller". The signature is written in a cursive style with a large, looped initial "D".

Dawn M. BahnMiller, Transcriber